

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

CARMEN ECHEVARRIA, LUIS MORELL,
& MANUEL MARTINEZ UMPIERRE

Plaintiffs

CIVIL NO. 03-2096 (JAG)

RICHARD L. BECK, MD, &
HEALTH CARE AUDITORS, INC.

Defendants

REPORT AND RECOMMENDATION

The matter is before the Court on co-defendants Health Care Auditors, Inc. (hereinafter "HCAI") and Dr. Richard L. Beck's Motion for Summary Judgment. For the reasons set forth below, it is hereby **RECOMMENDED** that the defendants' motion be **GRANTED**.

I. Factual Background:

The Court has reviewed the pleadings, as well as the affidavits of HCAI President Nicholas J. Carolides, Dr. Richard L. Beck, and plaintiff Manuel Martínez Umpierre. The Court has also reviewed selected portions of the deposition of plaintiff Martínez Umpierre submitted by the defendants, as well as various pertinent letters and correspondence between the parties, submitted by the plaintiffs. Although it was not submitted by either party, during a hearing held December 19, 2005 the Court also reviewed, without objection, the entire transcript of the deposition of Dr. Richard L. Beck. Based on these submissions, the Court finds that the following facts are not genuinely at issue:

Defendant HCAI is a corporation with offices located at 1656 Arabian Lane, Palm Harbor, Florida, which is engaged in the business of providing expert medical consulting services. On September 20, 2000, plaintiff Manuel Martínez Umpierre, an attorney admitted to practice before the Supreme Court of Puerto Rico, contacted HCAI to assist him in obtaining an expert evaluation of the medical records of his client, plaintiff Carmen Echevarría. Mrs. Echevarría, a 36 year old Puerto Rican woman, had undergone plastic surgery on August 24, 1999 and October 19, 1999.

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3 Through her attorneys, plaintiffs Martínez Umpierre and his colleague, Luis Morell Morell, Mrs.
4 Echevarría filed suit for medical malpractice against her plastic surgeon in the Court of First
5 Instance, Mayaguez Part, under the caption Carmen Echevarria Ríos v. Dr. Jorge Latoni Maldonado,
6 Civil No. IDP 2000-0344. To support her claim of malpractice, Mrs. Echevarría and her counsel
7 sought, through HCAI, the expert evaluation of a plastic surgeon. For this reason, on September
8 20, 2000, plaintiff Martínez Umpierre wrote to HCAI, enclosing a check in the amount of \$455.00
9 for “stat preview” of the medical records and assistance in identifying an expert. Affidavit of
Nicholas J. Carolides at paragraph 3.

10 As alleged in paragraph 10 of the Complaint, in his letter of September 20, 2000, plaintiff
11 Martínez Umpierre stated specifically that “if the case goes to trial, I will need a plastic surgeon
12 willing to come to Puerto Rico.” Exhibit 1 to Plaintiffs’ Opposition to Defendants’ Motion for
13 Summary Judgment; Affidavit of Manuel Martínez Umpierre at paragraph 2. The plaintiffs do not
14 dispute, however, that in response to this particular request, HCAI made clear to Mr. Martínez
15 Umpierre and his client that HCAI could not be responsible for such arrangements, which would
16 have to be made directly with any expert witness and would depend entirely upon him or her. See,
17 Defendants’ Uncontested Material Fact No. 4 and Plaintiffs’ “Answer” thereto admitting No. 4;
18 Affidavit of Nicholas J. Carolides at par. 4.

19 On November 6, 2000, HCAI advised Mr. Martínez Umpierre that HCAI had previewed his
20 case, that if they wanted to go any further an expert would be required, and that HCAI would
21 provide a board certified plastic surgeon’s expert report in exchange for a fee of \$2,500.00. See,
22 Defendants’ Uncontested Material Fact No. 5 and Plaintiffs’ “Answer” thereto admitting No. 5;
23 Deposition of Manuel Martínez Umpierre at p. 29, lines 3-12; Affidavit of Nicholas J. Carolides at
24 par. 5. The \$2,500.00 fee proposed by HCAI was solely to cover the board certified expert’s report,
25 and did not include any deposition testimony or trial testimony. See, Defendants’ Undisputed
26 Material Fact No. 6 and Plaintiffs’ “Answer” thereto admitting No. 6; Deposition of Manuel
27 Martínez Umpierre at p. 29, lines 16-24; Affidavit of Nicholas J. Carolides at par. 6; Affidavit of
28 Manuel Martínez Umpierre at paragraph 14.

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2 As alleged in paragraph 11 of the Complaint, on January 23, 2001, plaintiff Martínez
3 Umpierre accepted HCAI's proposal and sent HCAI a check for \$2,500.00 to retain its services.
4 HCAI's obligation under this agreement was limited to providing the plaintiffs with a board certified
5 plastic surgeon's report. There were no other terms to the agreement. Deposition of Manuel
6 Martínez Umpierre at p. 30, lines 1-8; Affidavit of Nicholas J. Carolides at par. 6.

7 On February 12, 2001, HCAI confirmed that Mrs. Echevarría's medical records had been
8 forwarded for review to co-defendant Dr. Richard L. Beck, a "reputable" plastic surgeon, and that
9 an expert report would be prepared no later than March 23, 2001. Exhibit 3 to Plaintiffs' Opposition
10 to Defendant's Motion for Summary Judgment. HCAI specifically advised the plaintiffs that it
11 "made no guarantees for events outside of its control and accept[ed] no liability ... for any event or
12 aspect of service which [the] client may find adverse to its expectations." Id.; see also, Defendants'
13 Undisputed Material Fact No. 11 and Plaintiffs' "Answer" thereto admitting No. 11; Affidavit of
14 Nicholas J. Carolides at paragraph 7. HCAI further advised the plaintiffs that it was their
15 responsibility to make any future arrangements directly with Dr. Beck, bearing in mind that
16 "providing expert testimony is a complex endeavor and numerous factors may affect experts' future
17 service to you, including ... professional conflicts ... future professional obligations or even the
18 expert's future desire to provide any litigation support for your firm." Id.; see also, Defendants'
19 Uncontested Material Fact No. 14 and Plaintiffs' "Answer" thereto admitting No. 14; Affidavit of
20 Nicholas J. Carolides at paragraph 8.

21 As alleged in paragraph 12 of the Complaint, Dr. Beck issued his written report on March
22 21, 2001, which was forwarded by HCAI to plaintiff Manuel Martínez Umpierre on May 11, 2001.
23 This report was clearly "sold to the client by [HCAI], not by the expert witness." Exhibit 3 to
24 Plaintiffs' Opposition to Defendant's Motion for Summary Judgment. In consideration for his
25 review of Carmen Echevarria's medical records and the preparation of his report, Dr. Beck was paid
26 a fee by HCAI. Affidavit of Dr. Richard L. Beck at par. 5.

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2 Subsequently, in September of 2001, plaintiff Manuel Martínez Umpierre contacted Dr.
3 Beck's office to arrange for him to give a deposition. Affidavit of Manuel Martínez Umpierre at
4 paragraph 5. On September 19, 2001, Martínez Umpierre's associate, María de los A. Rullán Bidot,
5 wrote to Dr. Beck requesting information as to his fees for deposition. Exhibit 5 to Plaintiffs'
6 Opposition to Defendant's Motion for Summary Judgment. According to Dr. Beck, he advised Mr.
7 Martínez Umpierre's staff that his fees had to be paid in advance, and depended on whether the
8 deposition was taken in Puerto Rico or at his office in Altamonte Springs, Florida. Affidavit of Dr.
9 Richard L. Beck at par. 6.

10 On April 2, 2002, Mr. Martínez Umpierre wrote a letter to Dr. Beck enclosing a Court Order
11 that stated that his deposition had to be taken in Puerto Rico on April 20th or 27th, 2002, and that Dr.
12 Beck would be paid for travel and lodging expenses, as well as the sum of \$800.00 for the first three
13 (3) hours of deposition. Exhibit 6 to Plaintiffs' Opposition to Defendants' Motion for Summary
14 Judgment. Mr. Martínez acknowledged in this letter that the proposed dates were subject to Dr.
15 Beck's "availability", and suggested that if Dr. Beck's deposition fees were greater than what the
16 Court had ordered he "would be glad to pay for" any difference. Id. Dr. Beck was subsequently
17 sent airline tickets to travel to Puerto Rico to be deposed, but he returned them and canceled the
18 deposition "due to difficulties in reaching Mr. [Martínez] Umpierre and [his] inability to confirm
19 the deposition date." Exhibit 8 to Plaintiffs' Opposition to Defendant's Motion for Summary
20 Judgment.

21 On July 16, 2002, Mr. Martínez Umpierre advised Dr. Beck that "the Court ha[d]
22 rescheduled [his] deposition for September 21 or 28, 2002", and asked him to confirm his
23 availability. Exhibit 9 to Plaintiffs' Opposition to Defendant's Motion for Summary Judgment. In
24 response, Dr. Beck's Office Manager advised Mr. Martínez Umpierre that Dr. Beck would not be
25 able to attend a deposition in Puerto Rico, but "would be happy to consider your taking his
26 deposition in Orlando at your convenience." Exhibit 10 to Plaintiffs' Opposition to Defendant's
27 Motion for Summary Judgment. On August 23, 2002, Mr. Martínez Umpierre wrote to Dr. Beck,
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2 stating that his “petition to take [the] deposition in Orlando was presented to the Court and was
3 denied” and that “a new order was issued for [his] deposition to be taken in Puerto Rico on October
4 5, 2002.” Exhibit 11 to Plaintiffs’ Opposition to Defendant’s Motion for Summary Judgment. Dr.
5 Beck’s Office Manager responded that Dr. Beck “was not available to provide any deposition
6 outside of the United States.” Exhibit 12 to Plaintiffs’ Opposition to Defendant’s Motion for
7 Summary Judgment. There was no further correspondence on the subject, and the deposition was
8 never held. Affidavit of Manuel Martínez Umpierre at paragraph 5; Affidavit of Dr. Richard L.
9 Beck at paragraph 8.

10 On February 5, 2003, Dr. Beck received a fax transmission from Mr. Martínez Umpierre
11 requesting that he be available to testify at the trial of the case scheduled for April 28, 2003. Exhibit
12 13 to Plaintiffs’ Opposition to Defendant’s Motion for Summary Judgment; Affidavit of Dr. Richard
13 L. Beck at paragraph 9. On February 10, 2003, Dr. Beck’s Office Manager advised Mr. Martínez
14 Umpierre that Dr. Beck would not be available to testify at the trial, and that he would need to
15 contact another surgeon to testify. Exhibit 14 to Plaintiffs’ Opposition to Defendant’s Motion for
16 Summary Judgment; Affidavit of Manuel Martínez Umpierre at paragraph 7; Affidavit of Dr.
17 Richard L. Beck at paragraph 11. On February 20, 2003, Mr. Martínez Umpierre wrote to Dr. Beck
18 “pleading with him to reconsider”, and stating that he would pay all travel expenses and fees for his
19 appearance. Affidavit of Manuel Martínez Umpierre at paragraph 8. Dr. Beck did not reconsider,
20 however, and according to the plaintiffs’ Complaint, this situation “on the eve of trial, forced the
21 Plaintiffs to desist from their case and request the voluntary dismissal thereof, thereby suffering
22 irreparable harm.” Complaint at par. 17.

23 There is no correspondence between Dr. Beck and Mr. Martínez Umpierre that would
24 suggest that they verbally discussed anything with respect to Dr. Beck’s traveling to Puerto Rico to
25 testify at trial. Nor is there any statement in the affidavits or depositions that would allow the Court
26 to infer the occurrence of any such discussion. Indeed, according to the plaintiffs, Dr. Beck and Mr.
27 Martínez Umpierre never spoke personally, and all communication between them took place through
28 staff. Affidavit of Manuel Martínez Umpierre at paragraph 13.

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2 **II. The Standard for Summary Judgment:**

3 Summary Judgment is appropriate only when, based upon the pleadings, affidavits, and depositions,
 4 "there is no genuine issue as to any material fact, and [where] the moving party is entitled to
 5 judgment as a matter of law." Fed.R.Civ.P. 56(c); Gaskell v. Harvard Coop. Soc'y, 3 F.3d 495, 497
 6 (1st Cir. 1993). In ruling on a motion for summary judgment, the Court must view "the facts in the
 7 light most favorable to the non-moving party, drawing all reasonable inferences in that party's
 8 favor." Barbour v. Dynamics Research Corp., 63 F.3d 32, 36 (1st Cir. 1995); Garside v. Osco Drug,
 9 Inc., 895 F.2d 46, 48 (1st Cir. 1990).

10 A factual issue is "genuine" if "it may reasonably be resolved in favor of either party" and,
 11 therefore, requires the finder of fact to make "a choice between the parties' differing versions of the
 12 truth at trial." Garside, 895 F.2d at 48 (citations and internal quotation marks omitted). Material
 13 facts are those that "possess the capacity to sway the outcome of the litigation under the applicable
 14 law." Cadle Co. v. Hayes, 116 F.3d 957, 960 (1st Cir. 1997); see also, Mulero Rodríguez v. Ponte,
 15 Inc., 98 F.3d 670, 673 (1st Cir. 1996). Thus, the burden is first on the movant to show "that there
 16 is an absence of evidence to support the non-moving party's case." Celotex Corp. v. Catrett, 477
 17 U.S. 317, 324 (1986).

18 Once a movant has made a preliminary showing, the nonmovant bears the burden to show
 19 the existence of a genuine material issue for trial. J. Geils Band Employee Benefit Plan v. Smith
 20 Barney Shearson, Inc., 76 F.3d 1245, 1251 (1st Cir.), cert. denied, 117 S.Ct. 81 (1996). A party
 21 seeking to establish a genuine issue of material fact must offer more than "effusive rhetoric and
 22 optimistic surmise." Id. Rather, the party must demonstrate, through submissions of evidentiary
 23 quality, that a trialworthy issue persists. Id. Factual specificity is required; a conglomeration of
 24 "conclusory allegations, improbable inferences, and unsupported speculation" is insufficient to
 25 discharge the nonmovant's burden. Medina-Munoz v. R.J. Reynolds Tobacco Co., 896 F.2d 5, 8 (1st
 26 Cir. 1990).

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2 **III. Analysis:**

3 Under Article 1213 of the Puerto Rico Civil Code, there are three material elements to a
4 valid, binding contract: "(1) the consent of the contracting parties; (2) a definite object which may
5 be the subject of the contract; and (3) the cause of the obligation which may be established." 31
6 L.P.R.A. Sec. 3391. Contracts shall be binding, but only if the "essential conditions for their
7 validity exist." 31 L.P.R.A. Sec. 3451. If a contract lacks any of these necessary elements, it is null
8 from its inception. Rodríguez v. Sucesión Pirazzi, 89 D.P.R. 506, 547 (1963). A contract which
9 lacks the consent of the parties produces no legal effect whatsoever. Satellite Broadcasting Cable,
10 Inc. v. Telefónica de España, 786 F.Supp. 1089, 1096 (D.P.R. 1992).

11 The plaintiffs' Complaint is premised exclusively upon an alleged breach of contract under
12 Puerto Rico law. It alleges that the statement made by Mr. Martínez Umpierre in his September 20,
13 2000 letter to HCAI, to the effect that if the case went to trial he would need an expert willing to
14 come to Puerto Rico, was "an essential requirement for the hiring of HCAI and Dr. Beck..."
15 Complaint at par. 18. It further alleges that Dr. Beck's unwillingness to appear as a witness at the
16 trial constituted a breach of contract, entitling the plaintiffs to damages.

17 Defendants HCAI and Dr. Beck argue in their Motion for Summary Judgment that even
18 viewing the alleged facts in the light most favorable to the plaintiffs and indulging all reasonable
19 inferences in their favor, the defendants cannot, as a matter of law, be held liable for breach of
20 contract. According to HCAI, the sole agreement between it and the plaintiffs stipulated that, in
21 exchange for a fee of \$2,500.00, HCAI would provide them with a board certified expert plastic
22 surgeon's report. HCAI claims it consented to, and fulfilled, this obligation, but assumed no
23 obligation to ensure that the expert would come to Puerto Rico for trial. Dr. Beck, in turn, argues
24 that he agreed only to review the relevant medical records and render a timely written report, which
25 he did. According to Dr. Beck, although there were various subsequent attempts to agree as to his
26 fees and availability for deposition and/or trial, there was never any "meeting of the minds" and
27 hence no additional contractual obligations assumed by him.

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2 In their Opposition to Defendants' Motion for Summary Judgment, the plaintiffs cite Article
3 1210 of the Civil Code of Puerto Rico, 31 LPRA Sec. 3375, which provides that contracts are
4 "perfected by the mere consent of the parties and are thereafter binding not only with regard to the
5 fulfillment of what has been expressly stipulated, but also with regards to all other consequences
6 which, according to their nature, are in conformity with good faith, use and the law." Relying on
7 Article 1210, the plaintiffs argue that the defendants must be held liable because "coming to Puerto
8 Rico to appear at trial was not only specifically stated as a condition to the contract", but "also a
9 legal consequence which, according to the nature of the engagement, is in conformity with good
10 faith, use and the law." See, Plaintiffs' Opposition to Motion for Summary Judgment, at p. 3, par.
11 17. In other words, the plaintiffs suggest that "the nature of the engagement, i.e., to serve as an
12 expert witness in a legal case, according to its nature, requires that the expert appear to testify at
13 deposition and at trial." Id. at par. 18.

14 For clarity of the record, the Court shall discuss *seriatim* the respective positions of HCAI
15 and Dr. Beck.

16 **A. HCAI:**

17 Plaintiff Manuel Martínez Umpierre admits in his affidavit that "the \$2,500 fee paid to HCAI
18 only covered the initial report..." Affidavit of Manuel Martínez Umpierre at par. 14. Further, he
19 admitted in his deposition that HCAI's obligation was limited to providing the plaintiffs with a
20 board certified plastic surgeon's report, and that there were no other terms to the agreement. See,
21 Deposition of Manuel Martínez Umpierre at p. 30, lines 1-8. It is hence undisputed that the
22 \$2,500.00 fee paid to HCAI was solely to cover the board certified expert's report, and did not
23 include any deposition testimony or trial testimony. See, Defendants' Undisputed Material Fact No.
24 6 and Plaintiffs' "Answer" thereto admitting No. 6; Deposition of Manuel Martínez Umpierre at p.
25 29, lines 16-24; Affidavit of Nicholas J. Carolides at par. 6. Moreover, HCAI expressly advised Mr.
26 Martínez Umpierre and his client that HCAI could not be responsible for any future arrangements
27 for deposition or trial testimony, which would have to be made directly with any expert witness and
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2 would depend entirely upon him or her. See, Defendants' Uncontested Material Fact No. 4 and
3 Plaintiffs' "Answer" thereto admitting No. 4; Affidavit of Nicholas J. Carolides at par. 4.

4 The plaintiffs' own admissions thus demonstrate unequivocally that the object of the contract
5 between the plaintiffs and HCAI was for a limited and very specific purpose: to provide the
6 plaintiffs with a board certified plastic surgeon's report on the issues raised in their malpractice
7 action. HCAI consented to, and fulfilled, this obligation. The cause or consideration was the
8 \$2,500.00 fee. HCAI assumed no obligation, however, to ensure that the expert would come to
9 Puerto Rico for trial. Thus, whatever may have been Mr. Martínez Umpierre's unilateral
10 expectations, as expressed in his September 20th letter, by his own admission HCAI did not consent
11 or agree to provide an expert willing to travel to Puerto Rico for trial. HCAI's consent to any such
12 condition was essential to give rise to a contractual obligation on its part.

13 Article 1210 of the Civil Code of Puerto Rico does not alter this analysis. The section relied
14 upon by the plaintiffs proclaims that contracts "are perfected by the mere consent of the parties and
15 are thereafter binding not only with regard to the fulfillment of what has been expressly stipulated,
16 but also with regards to all other consequences which, according to their nature, are in conformity
17 with good faith, use and the law." The Court does not think that this language was meant to alter
18 the agreed-upon object of a contract or otherwise require the imposition of obligations upon the
19 contracting parties that they did not freely agree to assume. Rather, the Court views Article 1210
20 merely as a statutory definition of the broad extent of contractual obligations, which must be read
21 in the context of the traditional elements of a contract embodied in Article 1213 of the Civil Code,
22 i.e. object, cause and consent.

23 As detailed above, the plaintiffs in this case admit that expert deposition and trial testimony
24 were never a part of their agreement with HCAI. Since HCAI did not, in contracting with the
25 plaintiffs, consent to ensure that the expert would travel to Puerto Rico for trial, and expressly
26 disclaimed liability for such future arrangements, it cannot be thereafter bound to fulfill this
27 "obligation." Plaintiff has cited no case or other authority to suggest that under Article 1210 a party
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2 is bound to fulfill a condition that he did not agree to and, indeed, expressly disclaimed. As such,
3 the Court finds that Article 1210 of the Civil Code does not provide support for the plaintiffs'
4 Opposition to HCAI's Motion for Summary Judgment. Accordingly, it is hereby
5 **RECOMMENDED** that defendant HCAI's Motion for Summary Judgment be **GRANTED**.

6 **B. Dr. Richard L. Beck:**

7 As to co-defendant Dr. Richard L. Beck, after careful review of the facts gleaned from the
8 parties' respective submissions, the Court concludes that the plaintiffs have not met their burden of
9 showing the existence of a genuine issue with respect to Dr. Beck's contention that he never agreed
10 to travel to Puerto Rico and testify at trial.

11 As a condition of his engagement by HCAI, Dr. Beck agreed to review Mrs. Echevarría's
12 medical records and render a written opinion regarding her treatment. Dr. Beck fulfilled these
13 obligations, and in exchange was paid a fee by HCAI. Subsequently, the plaintiffs were required
14 to engage Dr. Beck for the purpose of securing his deposition and/or trial testimony. Although there
15 were various attempts to agree as to Dr. Beck's fees and availability for deposition, there was never
16 any agreement and the deposition was never held. Although Mr. Martínez Umpierre subsequently
17 attempted to engage Dr. Beck to testify at trial, and offered to pay his expenses and fees, Dr. Beck
18 was simply not willing to accept the engagement. The plaintiffs have submitted no evidence from
19 which it might reasonably be inferred that Dr. Beck agreed at any time to come to Puerto Rico and
20 testify at trial.

21 Hence, the evidence before the Court demonstrates that there was never any "meeting of the
22 minds" between Dr. Beck and Mr. Martínez Umpierre. The various letters submitted as exhibits by
23 the plaintiffs merely show a series of offers made and rejected with respect to the taking of the
24 doctor's deposition. Clearly, Dr. Beck accepted no engagement during the course of these
25 negotiations, and the unsuccessful attempts to schedule a deposition were eventually aborted. When
26 finally requested to testify at trial, Dr. Beck similarly declined the plaintiffs' offer, and could not be
27 persuaded to reconsider. Nothing in the depositions, affidavits and other submissions reviewed by
28 the Court suggests that he agreed at any time to come to Puerto Rico to testify.

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2 Thus, with respect to Dr. Beck's alleged contractual liability in this case, there is no evidence
 3 from which a jury might reasonably infer the existence of a valid contract, because there was neither
 4 "the consent of the contracting parties" nor "the cause of the obligation which may be established."
 5 31 L.P.R.A. Sec. 3391. Were there some evidence, however tenuous, that Dr. Beck agreed, either
 6 verbally or in writing, to come to Puerto Rico to testify, and to be paid later for his services, there
 7 would be an issue for the jury to decide. By the same token, had Dr. Beck been paid his fees in
 8 advance, there would clearly be a triable issue. But under the circumstances set forth above, there
 9 is simply no evidence of an agreement between him and the plaintiffs. As such, on February 5,
 10 2003, when he was notified of the trial date, Dr. Beck was under no obligation to come to Puerto
 11 Rico to testify, and therefore cannot be held liable for the alleged breach of contract in this case.

12 Again, Article 1210 of the Civil Code of Puerto Rico does not alter this analysis. The
 13 undisputed evidence shows that Dr. Beck contracted with and was paid by HCAI, not the plaintiffs,
 14 to prepare his expert report. Clearly, Dr. Beck's preparation of such report at HCAI's behest did not
 15 constitute a contract to give deposition or trial testimony. The plaintiffs admit that they were
 16 specifically advised by HCAI that they had to engage Dr. Beck separately for that purpose. Since
 17 they never reached an agreement with Dr. Beck, however, there was no underlying engagement as
 18 an expert that might result in additional contractual obligations under Article 1210. Thus, even if
 19 it were assumed that "the nature of the engagement, i.e., to serve as an expert witness in a legal case"
 20 required that the expert appear to testify at trial, no such obligation could be legally imposed upon
 21 Dr. Beck because he was never actually engaged by the plaintiffs.

22 Accordingly, for the reasons set forth above, it is hereby **RECOMMENDED** that co-
 23 defendant Dr. Richard L. Beck's Motion for Summary Judgment be **GRANTED**.

24 **IV. Conclusion:**

25 In sum, the uncontested material facts clearly show that HCAI never obligated itself to
 26 provide the plaintiffs with an expert witness willing to travel to Puerto Rico to testify at trial.
 27 Moreover, Dr. Beck never reached any actual agreement with the plaintiffs regarding his availability

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2 to give deposition or trial testimony. Because the uncontested facts show that the defendants never
3 assumed the contractual obligation upon which the plaintiffs base their breach of contract claim, the
4 defendants are entitled to summary judgment as a matter of law.

5 Under the provisions of 28 U.S.C. § 636 and Local Rule 72(d), District of Puerto Rico, any
6 party who objects to this report and recommendation must file a written objection thereto with the
7 Clerk of the Court within ten (10) days of the party's receipt of this report and recommendation.
8 The written objections must specifically identify the portion of the recommendation, or report to
9 which objection is made and the basis for such objections. Failure to comply with this rule
10 precludes further appellate review. See Thomas v. Arn, 474 U.S. 140, 155 (1985), reh'g denied, 474
11 U.S. 1111(1986); Davet v. Maccorone, 973 F.2d 22, 30-31 (1st Cir. 1992).

12 **SO RECOMMENDED.**

13 In San Juan, Puerto Rico, this 28th day of December, 2005.

14
15 *Gustavo A. Gelpi*

16 **GUSTAVO A. GELPI**
17 United States Magistrate-Judge

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